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Forest S. Baker IV

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09/03/2009

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EXAMINER

ELAHEE, MD S

ART UNIT

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2614

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/920,072	<b>Applicant(s)</b> BAKER, FOREST S.	
	<b>Examiner</b> MD S. ELAHEE	<b>Art Unit</b> 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-18,20,21,76-93 and 96-116 is/are pending in the application.
- 4a) Of the above claim(s) 39-75 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-18,20,21,76-93 and 96-116 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. This action is responsive to an amendment filed on 06/10/2009. Claims 1-6, 8-18, 20, 21, 76-93 and 96-116 are pending. Claims 7, 19, 22-38, 94 and 95 have been previously cancelled. Claims 39-75 have been previously withdrawn.

### ***Response to Arguments***

2. Applicant's arguments filed on 07/03/2007 Remarks have been fully considered but are moot in view of the new ground(s) of rejection which is deemed appropriate to address all of the needs at this time.

### ***Specification***

3. The disclosure is objected to because of the following informalities: The phrase “in answer” in page 5, line 7 of the original specification should apparently be “an answer”.

Appropriate correction is required.

### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re*

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*Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-6, 8-18, 20, 21, 76-93 and 96-116 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14, 23-35, and 41-53 of copending Application No. 11/092,120. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim in the pending application is broader than the one in co-pending application, *In re Van Ornum and Stang*, 214 USPQT61, broad claims in the pending application are rejected as obvious double patenting over previously patented narrow claims. For example, claim 1 of the pending application is the same as claim 1 of the co-pending application except profile module for storing step.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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6. Claims 76-93 and 107-116 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 76, the phrase “said storage medium” in lines 2-3 lacks sufficient antecedent basis.

Claim 107 is rejected for the same reasons as discussed above with respect to claim 76. Since claims 77-93 and 108-116 are dependent claims, these claims are also rejected.

7. Claims 107-116 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 107, the phrase “the agent” in line 12 lacks sufficient antecedent basis.

Since claims 108-116 are dependent claims, these claims are also rejected.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 107-116 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Szlam** (US 5,511,112) in view of **Nakatsu et al.** (US 5,787,151).

As to Claims 107,108, with respect to Figures 1-4E, **Szlam** teaches a computer readable medium having stored thereon computer executable instructions for performing a method for contacting a customer, the method comprising:

providing an integrated system for hybridized interaction with a contact, the interaction being selectable between human and computer delivery(Col. 9, line 51- Col. 10, line 8);

initiating a call to the contact (Col. 9, lines 18-20);

executing an interaction protocol to create an interaction with the contact (Col. 9, line 51- Col. 10, line 5); and

interleaving responses to the contact and said responses comprising two different prerecorded messages [i.e., a recorded scripted response and a recorded interjection response] selected by the agent (Col. 8, lines 45-58, Col. 9, line 51- Col. 10, line 8).

However, **Szlam** does not teach that the recorded scripted response is selected from a script tree and wherein the recorded interjection response is selected from an interjection menu. **Nakatsu** teaches that the prerecorded messages [i.e., recorded scripted response] is selected from one menu [i.e., a script tree] and wherein the recorded interjection response is selected from another menu [i.e., an interjection menu] (Col. 9, line 63- Col. 10, line 12, Col. 11, lines 43-46). Having the cited analogous art at the time the invention was made, it would have been obvious to one of ordinary skill in the art to add the recorded scripts selected from at least a script menu and an interjection menu to **Szlam's** invention for agents to transparently communicate with customers as taught by **Nakatsu's** invention in order to provide agents with monitoring of customers responses.

As to Claim 109, **Szlam** teaches the computer readable medium of claim 107, wherein the predetermined answer is selected from audio recordings [i.e., computer-generated wave files, audio recordings, and synthesized voice] (Col. 8, lines 45-58, Col. 9, line 51- Col. 10, line 8).

As to Claim 111, **Szlam** teaches the computer readable medium of claim 107, wherein executing an interaction protocol further comprises selecting a contact type (Col. 9, line 65- Col. 10, line 5).

As to Claim 112, **Szlam** teaches the computer readable medium of claim 107, further comprising validating sales information (Col. 17, lines 26-29).

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As to Claim 113, **Szlam** teaches the computer readable medium of claim 107, further comprising updating a customer file (Col. 8, lines 21-25).

As to Claim 114, **Szlam** teaches the computer readable medium of claim 107, further comprising maintaining a history of recorded scripts played (Col. 8, lines 45-58, Col. 9, line 51- Col. 10, line 8).

As to Claim 115, **Szlam** teaches the computer readable medium of claim 107, wherein interleaving further comprises deciding on intervention (Col. 8, lines 45-58, Col. 9, line 51- Col. 10, line 8).

As to Claim 116, **Szlam** teaches the computer readable medium of claim 115, wherein deciding on intervention further comprises selecting between options including at least a live-voice response and a recorded response (Col. 8, lines 45-58, Col. 9, line 51- Col. 10, line 8).

11. Claim 110 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Szlam** in view of **Nakatsu et al.** further in view of **Miner et al.** (US 5,652,789).

As to Claim 110, **Szlam** teaches the computer readable medium of claim 107, wherein the voice waveform further comprises:

**Szlam** in view of **Nakatsu** does not teach the following limitation:

“an audio recording comprises a voice response recorded by a voice actor”



However, it is obvious that **Szlam** suggests the limitation. This is because **Szlam** teaches that scripts are prerecorded for use by a computer (Col. 8, lines 1-4). **Miner** teaches creating commands and tasks (scripts) with personalities (voice actors) for use by subscribers customer service representatives (Col. 45, lines 46-57). Since **Szlam** and **Miner** are in analogous customer service representative art at the time the invention was made, it would have been obvious to one of ordinary skill in the art to add personality scripts to **Szlam**'s invention in view of **Nakatsu**'s invention for supporting organizations sales calls as taught by **Miner**'s invention in order to provide enhancement of sales opportunities.

12. Claims 107 and 108 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Megyesi** (US 5,544,230) in view of **Nakatsu et al.** (US 5,787,151).

As to Claims 107,108, with respect to Figure 1, **Megyesi** teaches a computer readable medium having stored thereon computer executable instructions for performing a method for contacting a customer, the method comprising:

- providing an integrated system for hybridized interaction with a contact, the interaction being selectable between human and computer delivery(Col. 5, lines 12-39);
- initiating a call to the contact (Col. 5, lines 16-19);
- executing an interaction protocol to create an interaction with the contact (Col. 5, lines 12-39); and

interleaving responses to the contact and said responses comprising prerecorded sales messages [i.e., a recorded scripted response and a recorded interjection response] selected by the agent (Col. 5, lines 12-39).

However, **Megyesi** does not teach that the recorded scripted response is selected from a script tree and wherein the recorded interjection response is selected from an interjection menu. **Nakatsu** teaches that the prerecorded messages [i.e., recorded scripted response] is selected from one menu [i.e., a script tree] and wherein the recorded interjection response is selected from another menu [i.e., an interjection menu] (Col. 9, line 63- Col. 10, line 12, Col. 11, lines 43-46). Having the cited analogous art at the time the invention was made, it would have been obvious to one of ordinary skill in the art to add the recorded scripts selected from at least a script menu and an interjection menu to **Megyesi's** invention for agents to transparently communicate with customers as taught by **Nakatsu's** invention in order to provide agents with monitoring of customers responses.

### ***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MD S. ELAHEE whose telephone number is (571)272-7536. The examiner can normally be reached on Mon to Fri from 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang can be reached on (571) 272-7547. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Primary Examiner,  
Art Unit 2614  
September 3, 2009